IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8130 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BABLU KALIDAS MARATHI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

MR UDAY BHATT for respondent State

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 29/08/2000

ORAL JUDGEMENT

This is a writ petition filed by the detenu under Article 226 of the Constitution of India, challenging the order of detention dated 7-1-2000.

Here in this case, the learned Advocate for the petitioner has stated that the respondents have not filed any affidavit-in-reply and therefore, the respondents have not controverted the grounds of attack, listed in the main petition.

As per the papers with regard to grounds it is the case of the detaining authority, that the detenu is a bootlegger within the meaning of Section 2(b) of the Gujarat Prevention of Anti-Social Activities Act 1985 (in short "the Act") and that the activities of the detenu are prejudicial to the maintenance of public order.

The detaining Authority has mentioned five different criminal cases lodged against the detenu under the Bombay Prohibition Act. The detaining Authority has also placed reliance for the subjective specification, on statements of two witnesses whose identity has not been disclosed by him, claiming the privilege under Section 9(2) of the Act. Ms D.R. Kachhavah has drawn attention of this Court to such statements of two witnesses. Such statements of two witnesses were recorded on 6-1-2000 and the detaining authority verified the two statements on 7-1-2000 and on the very same day i.e. 7-1-2000 the detaining authority passed the order of detention. Ms.Kachhavah, learned Advocate for the petitioner has argued that the detaining authority had no time to apply his mind for claiming privilege under Section 9(2) of the Act. She has cited the case of Kalidas Chandubhai Kahar Vs. State of Gujarat and Others reported in 1993 (2) GLR 1659, wherein it has been held by this Court that the detaining authority is expected to do some exercise before actually exercising the privilege under Section 9(2) of the Act. It has further been held that if the statements of witnesses are to be relied on, that statements should be genuine statements of the real persons. It is required by the detaining authority to check up and verify as to whether the persons are fictitious persons or not, or whether the statements are bogus statements or not and for this at least some time is required to verify these statements. In this case on 7-1-2000, detaining authority verified the statement and passed the detention order on the very same day. Ms Kachhavah, further, submitted that in view of the above, the present case squarely falls within the facts of the case cited above and therefore, the order of detention, which is challenged in this writ petition, is bad in law and illegal.

In view of the facts stated herein above, the

order of detention dated 7-1-2000 passed by the respondent no.1 is required to be quashed and set aside and accordingly it is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not wanted in any other criminal case. Rule is made absolute. Direct service is permitted.

29-8-2000 (H. H. Mehta, J.)

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